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**Irish Life**

# ONLINE TECHNICAL GUIDE TO ESTATE PLANNING FROM IRISH LIFE



This is a technical guide for financial advisers only and is not intended as an advertisement.



# FOREWORD

This document provides an outline of the taxation issues to be considered when you are putting together an estate planning arrangement for your clients and is based on our understanding of current legislation and Revenue practice.

In all cases we would recommend that your customers obtain professional legal and tax advice to ensure that any arrangement they put in place is appropriate to their personal and corporate circumstances.

Information is correct as at January 2016 but is subject to change.



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## SECTION

# 1

# ESTATE PLANNING

## INTRODUCTION – WHY IS ESTATE PLANNING IMPORTANT FOR YOUR CLIENTS?

In the past, 'estate planning' was something believed to be only for the elite in our society: a small number of wealthy individuals and their families. However, this is no longer the case. If your clients are planning to leave their house, their savings or any other assets to their family, you, as their Financial Broker, can help make sure the real value of these assets is not reduced by inheritance tax. Despite the recent downturn in the economy, it is still important to protect estate values. Reductions in the tax free thresholds, together with increases in the capital acquisitions tax rate, have resulted in more and more people who previously did not have to give consideration to this area now needing to do so.

Revenue reported that in 2013, €277 million was paid in capital acquisitions tax.

The rate of capital acquisitions tax, both for gifts and inheritances, increased from 20% in 2008 to 33% in 2013.

Tax free thresholds have been reduced. For example, the Group 1 threshold from parents to children reduced from €521,208 in 2008 to €280,000 in 2015. The impact of these changes, it outlined in the following table:

Inheritance Tax Liability			
Year	2008	2012	2015
Tax Rate	20%	20%	33%
Group 1 Threshold	€521,208	€250,000	€280,000
Inheritance			
€300,000	Nil	€15,000	€6,600
€500,000	Nil	€75,000	€72,600
€1,000,000	€95,758	€225,000	€237,500

### For example:

Mr and Mrs Kelly are aged 55 and their estate, valued at €3,000,000, is to be divided equally between their three children. Their children's inheritance tax bill will be €712,800, i.e. 24% of the estate will be taken in tax.

## HOW DO I APPROACH THE ISSUE OF CAPITAL ACQUISITIONS TAX PLANNING WITH CLIENTS?

Many people start off by looking to save tax and avoid legal problems. While this is vitally important, it is equally important to try to plan for what your clients would like and what is practical in their particular family or business circumstances.

So you start with the facts and your client's intentions, and then look to minimise any problems and plan for any tax impacts that cannot be overcome:

Ask your clients some initial questions:

- What would you like to happen on your death?
- Does everything go to a spouse, a partner, some to children, a charity, and a friend?
- Are there practical considerations?
- Your client may have a good idea of what they want to happen, but has this been legally copper-fastened: have they made a will?

## WHY SHOULD YOUR CUSTOMER MAKE A WILL?

- A will ensures that the estate will be divided according to the individual's wishes and not as the Succession Act 1965 dictates.
- For people with young children it provides an opportunity to appoint legal guardians to the children in the event that both parents should die together: in a car or plane crash, for example.
- The exercise involves a useful financial review. It highlights just how financially prepared your client's family would be in the event of unexpected death.
- A will is an essential part of planning for capital acquisitions tax. By making a will an individual can, for example, make maximum use of the thresholds for his/her children and the spouse and civil partner exemption from inheritance tax.
- Generally speaking there is less delay and dispute where an individual dies and leaves a will than where no will exists.

## MAKING A VALID WILL

The Succession Act 1965 covers some of the requirements for making a will.

1. A will can be made by any person over age 18, or who is married, and is of "sound disposing mind".
2. A will must be "in writing", which can include printed or typed wills.
3. The will must be signed by the testator, i.e. the person making the will, in the presence of two or more witnesses present at the same time.
4. The witnesses are only testifying to the signature of the testator. They do not have to read the will, nor is it necessary for them to know what is contained in the will. It is important to note that a witness or any spouse of a witness cannot benefit under the will.
5. While an individual can draft his will in any way he wants he should bear in mind that the Succession Act of 1965 does give certain rights to an individual's spouse, civil partner and children in certain circumstances, regardless of the terms of the will.

## REVOKING A WILL

An individual's circumstances can change over time. A will made a number of years ago may not take account of the fact that the individual is now married, has more children or indeed has some grandchildren whom he wishes to include. It is therefore not only important to make a will; it is vital to review it from time to time.

A will can be revoked in a number of ways:

1. By making another will. It is standard practice to insert a clause in a will to say that this will revokes all previous wills. If, therefore, an individual makes a new will and signs it, this will automatically cancel any previous will.
2. A will made when single is automatically revoked if the individual subsequently marries.
3. By the destruction of the will. The Succession Act provides that a will is automatically revoked "by burning, tearing or destruction of it by the testator, or by someone in his presence and by his direction with the intention of revoking it."

## SUCCESSION ACT 1965

When a person dies all their property devolves to their 'personal representatives' to transfer to the individual's successors. The way property is transferred will depend on whether or not the deceased had made a will. If there is a valid will the personal representatives, the 'executors' distribute the assets in accordance with the terms of the will. If there is no will the individual is said to have died 'intestate' and the property is distributed by the personal representatives, 'administrators', in accordance with the provisions of the Succession Act 1965. The Succession Act provides a legal spouse, a registered civil partner and children with certain minimum legal entitlements as follows:

No will - where a person dies 'intestate'	
Spouse or civil partner no children:	Spouse or civil partner entitled to full estate
Spouse or civil partner and children:	Spouse or civil partner gets 2/3rds. Civil partners entitlement is subject to the financial needs of any children being met 1/3 equally between children.
No spouse or civil partner but children:	Estate is divided equally between the children
No spouse or civil partner and no children:	Parent(s) if living, otherwise brothers/sisters

Where an individual dies 'intestate' leaving neither spouse, civil partner nor children, his assets will pass to his parents, if his parents are deceased to his brothers and sisters, otherwise to wider family; the Act provides a hierarchical list.

Will - a 'testate' death (entitlement regardless of provisions of will):	
Spouse or civil partner and no children:	Spouse or civil partner entitled to ½ the estate
Spouse or civil partner and children:	Spouse or civil partner entitled to 1/3 of estate. Civil partners entitlement is subject to the financial needs of any children being met as directed by the courts.

An individual can make a will any way he wants, but Sections 111 and 111A of the Succession Act give a surviving spouse or civil partner certain legal rights regardless of what the will provides.



Children do not have a right to a particular share of the estate under a will. However, Section 117 of the Succession Act gives a child the right to apply to the court for a share of the estate under a will if in the court's opinion "the testator has failed in his moral duty to make proper provision for the child in accordance with his means."

It is worth mentioning that while this right of the child to apply to the courts will not affect the portion of the estate to which a legal spouse has a statutory right, it could impact on the amount of the estate to which a registered civil partner is entitled.

## WHAT IS THE TARGET MARKET FOR CAPITAL ACQUISITIONS TAX PLANNING?

- Parents who wish to fund for their children's tax bill in the event of their death.
- Adult children who will have an inheritance tax bill on the death of their parents.
- Business owners who wish to ensure the survival of their business when they pass it on to the next generation.
- Farm owners who wish to protect the value of their land and agricultural assets when they are passed on to the next generation.
- Anyone planning to pass an Approved Retirement Fund (ARF) to a child over 21 years of age.

## WHAT IS INHERITANCE TAX?

Inheritance tax comes under the heading of capital acquisitions tax.

Capital acquisitions tax (CAT) is the tax that is charged when you receive a gift or an inheritance. We will be dealing with gift tax payable on lifetime gifts and inheritance tax payable on inheritances received on a death.

## WHO PAYS THE TAX?

It is the person receiving the gift or inheritance who is liable to Capital Acquisitions Tax and not the person or estate providing the benefit.

## WHO IS LIABLE TO THIS TAX IN IRELAND?

The beneficiary of the asset is primarily liable for the payment of capital acquisitions tax. Whether or not a charge to tax arises is dependent on whether the disponent (the deceased person who is providing the inheritance) or the beneficiary (the person receiving the inheritance) is resident or ordinarily resident in the State at the date of the gift or inheritance.

- If the disponent or the beneficiary is resident or ordinarily resident in Ireland, then the entire estate will be liable to capital acquisitions tax here.
- If both the disponent and the beneficiary are not resident or ordinarily resident in Ireland, then only Irish property will be liable to tax, e.g. Irish property, shares in an Irish company, and money in an Irish bank account.

## WHAT HAPPENS WHEN THE TAX FALLS DUE?

On death an Inland Revenue Affidavit has to be completed by the personal representatives of the deceased's estate. This affidavit sets out details of the deceased's assets and gives the names and addresses of beneficiaries.

It is not only the assets of the estate that must be included on this form.

If, for example, the proceeds of a life assurance plan have been left in trust to particular beneficiaries, even though these proceeds do not form part of the deceased's estate, full details of the plan and the beneficiaries should be included in the Inland Revenue Affidavit.

Details of previous gifts/inheritances made by the deceased must also be included.

A capital acquisitions tax return must be completed by a beneficiary if the value of a gift or inheritance exceeds 80% of the threshold amount.

## PAYMENT OF CAPITAL ACQUISITIONS TAX

The tax is due and payable on the valuation dates indicated below.

31 October 2013	Payment of CAT on gift/inheritance from 1 September 2012 to 31 August 2013
31 October 2014	Payment of CAT on gift/inheritance from 1 September 2013 to 31 August 2014.
31 October 2015	Payment of CAT on gift/inheritance from 1 September 2014 to 31 August 2015.
31 October 2016	Payment of CAT on gift/inheritance from 1 September 2015 to 31 August 2016.

- If tax is not paid by the relevant payment dates interest will be charged.
- If your client receives a gift or inheritance they may be obliged to file a return before the above dates even in circumstances where there is no liability to tax on the current benefit.
- In the case of gifts the Revenue may write to individuals requiring them to make a return or a nil return as the case may be.
- Donors of gifts may also be called upon to make a return in certain circumstances.

## WHAT VALUE IS USED FOR THE ASSETS WHEN CALCULATING THE LIABILITY?

The first step in calculating a liability to CAT is to assess the value of the assets that will be passed on. Tax is payable on the value of all the assets inherited / received.

Tax is based on the market value of assets. Market value is the price that, in the opinion of the Revenue Commissioners, the assets would fetch if sold on the open market in such a manner that best price is obtained.

No account is taken of the fact that a forced sale could depress market value. If the Revenue is not satisfied with a valuation submitted, they can obtain their own valuation. Where there is a difference, the Revenue can impose their valuation. The Revenue valuation can be appealed so the valuation in practice ends up somewhere between the two.

## WHAT ARE THE CAT RATES AND THRESHOLDS THAT APPLY?

For new gifts and inheritances received on or after the 5th of December 2001 tax is calculated according to the total of all gifts and inheritances received from all sources since 5th December, 1991. The following CAT table currently applies:

	Tax Rate
Group Threshold	Nil
Balance	33%

The group threshold amounts vary depending on the relationship between the beneficiary and the disposer, i.e. the person providing the gift or inheritance.

Group 1 €280,000	Where the person receiving the property is a child of the disposer or of the civil partner of the disposer or a minor child of a deceased child of the disposer or of the civil partner of the disposer, or a minor child of the civil partner of a deceased child of the disposer, or of the civil partner of the disposer.
Group 2 €30,150	Where the person receiving the property is a lineal ancestor, descendant, a brother/sister, or child of a brother/sister or the child of a civil partner of a brother or sister of the disposer.
Group 3 €15,075	All other cases

The threshold amounts are those applying with effect from midnight on 13th October 2015.

## WHAT DOES AGGREGATION MEAN?

Under the current aggregation rules all benefits from Group 1 will be added together with an overall threshold of €280,000. Benefits from Group 2 members (brother, sister, grandparent etc.) will be added together for the purpose of the €30,150 threshold, and benefits from Group 3 members (strangers) for the purpose of the €15,075 threshold. So in effect a beneficiary can potentially receive up to €325,225 tax free if the benefits come through different 'groups'.

## WHAT ASSETS ARE LIABLE TO INHERITANCE TAX?

The personal representatives of the deceased must list all assets and liabilities of the deceased when completing a tax return in relation to inheritance tax.

Tax is levied on the total net value of all assets received by a beneficiary, other than a legal spouse or civil partner.

All assets are taken into account. These could include:

- The family home
- Second home
- Investment property
- The value of all investments
- Cash
- Pension
- All personal property
- Life assurance benefits
- House contents
- Jewellery

## WHAT RELIEFS OR EXEMPTIONS CAN APPLY?

Certain reliefs and exemptions apply to certain types of assets. These have been introduced over the years primarily to encourage private enterprise and to avoid the forced sale of a family farm, business or the family home in certain circumstances. The main exemptions or reliefs are:

### SPOUSE OR CIVIL PARTNER EXEMPTION

Gifts or inheritances received by one spouse or civil partner from the other are totally exempt from CAT.

### AGRICULTURAL RELIEF

The value of farmland, buildings and stock can be reduced by 90% where the beneficiary is a qualifying farmer and he or she holds the property for a minimum of six years.

### BUSINESS RELIEF

Can provide a similar reduction of 90% in the value of certain businesses or private companies, where both the business and the beneficiary meet certain qualifying conditions.

### FAMILY HOME RELIEF

Exemption from gift and inheritance tax is available on the value of certain dwellings with up to an acre of land where the beneficiary meets certain conditions that ensure that the property was, and continues to be, their home.

### FAVOURITE NIECE/NEPHEW RELIEF

Favourite Nephew/Niece relief entitles a beneficiary who is a child of the disposer's brother or sister or a child of the civil partner of the disposer's brother or sister to be treated as a 'child' of the disposer provided certain conditions are met. Where the relief applies, the niece or nephew is entitled to the Group 1 threshold instead of the Group 2 threshold. The relief will only apply to assets used in connection with a business.

### LIFE ASSURANCE RELIEF

The proceeds of life assurance policies, where the plan was effected specifically for the payment of inheritance tax, will not be subject to inheritance tax - provided they are actually used to pay the tax bill.

### SPOUSE OR CIVIL PARTNER EXEMPTION

Perhaps the most important relief from inheritance tax is the spouse or civil partner exemption, where gifts or inheritances received by one spouse or civil partner from the other are totally exempt from CAT. This relief currently applies only in the case of a "Legal Spouse" or "Registered Civil Partner". Cohabitants who are not married are currently treated as strangers for inheritance and gift tax purposes.

### CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND OBLIGATIONS OF COHABITANTS ACT 2010

Our society today is changing and more and more people are living together in 'non-married' situations.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 has introduced new definitions for, and extended certain rights to, these relationships.

## CIVIL PARTNERS

The Act defines a civil partnership as a relationship between two individuals of the same sex, neither of whom are married or in an existing civil partnership or under the age of 18.

The legislation amended the Succession Act 1965 to give a registered civil partner somewhat similar rights to those of a legal spouse on death, subject to the financial needs of any children being met. As a follow on from this change the spouse exemption from CAT was also extended to civil partners in the Finance (No. 3) Act 2011.

## COHABITANTS

A cohabitant is one of two adults, who can either be of the same or opposite sex, who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship, or married to each other, or civil partners of each other.

A qualified cohabitant is defined as an adult who was in a relationship of cohabitation with another adult and who was living with the other adult as a couple for a period of two years or more, in the case where they are the parents of one or more dependent children, and of 5 years or more in any case.

It is worth noting that neither the Succession Act rights nor the CAT exemption available to civil partners were extended to cohabitants. So while a qualified cohabitant may apply for provision out of their deceased cohabitant's estate, they are only entitled to an amount after any spouse's and civil partner's rights have been satisfied, and any inheritances or gifts they do receive from their 'cohabitant' will be subject to CAT.

This means that one cohabitant inheriting from the other would be entitled only to the 'strangers' threshold of €15,075.

## AGRICULTURAL RELIEF

In addition to the relief available on the value of farmland, buildings and stock, agricultural relief can be claimed where a gift of, say, cash from an investment based estate is gifted to a qualifying 'farmer' on the basis that the asset is converted to qualifying agricultural property within two years of the date of the gift or inheritance.

What this means in effect is that the asset gifted does not have to be agricultural property, but once the gift is made subject to it being converted to qualifying agricultural property by a qualifying farmer, the relief can still be claimed on the gift or inheritance where the recipient is a qualifying farmer.

This relief is given in respect of certain agricultural property taken by a "farmer". The relief reduces the market value of the agricultural property by 90% for gifts and inheritances taken on or after the 23rd of January 1997.

The market value of the agricultural property as so reduced is then termed "agricultural value" in the Act and is substituted for market value in the calculation of tax.

### AGRICULTURAL RELIEF – REVENUE GUIDELINES

With effect from 1st January 2015 changes have been made to the conditions for agricultural relief from CAT which are designed to confine the relief to genuine farmers and ensure productive use of the agricultural property.

For gifts and inheritances taken on or after 1st January 2015 the beneficiary must satisfy the following additional conditions:

1. Have an agricultural qualification (a qualification of the kind listed in Schedule 2, 2A or 2B of the Stamp Duties Consolidation Act 1999) or obtain such a qualification within 4 years and farms the agricultural property for a period of not less than six years on a commercial basis and with a view to the realisation of profits

Or

2. Spends not less than 50% of his or her normal working time farming agricultural property on a commercial basis with a view to making a profit for a period of not less than six years commencing on the valuation date.

Alternatively, where the beneficiary leases the agricultural property the individual to whom the property is leased must also satisfy condition 1. or 2. above.

### NORMAL WORKING TIME

"Normal working time" (including on-farm and off-farm working time) has been defined by Revenue as 40 hours per week. This will enable farmers with off-farm employment to qualify for the relief provided they spend a minimum of 20 hours working per week, averaged over a year, on the farm.

### VALUATION DATE

These additional requirements apply from the valuation date of the gift or inheritance.

In the case of a gift of agricultural property, the date of the gift is the "valuation date".

In the case of an inheritance, the valuation date can be as early as the date of inheritance if the person inheriting farms the agricultural property from the date of death of the deceased whereas in other situations this can be the date of grant of probate or administration.

### SPLITTING THE GIFT OR INHERITANCE

Where a beneficiary receives agricultural property which includes a farm house, and leases the land to an individual or company which will satisfy the farming conditions but retains the farm house and resides in it as his or her only or main residence, Revenue will not seek to restrict the relief.

**As a result of these changes the revised conditions for agricultural relief from CAT with effect from 1st January 2015 are as follows:**

- The relief only applies to "agricultural property" which is defined as "agricultural land, pasture and woodlands situated within a Member State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with lands occupied therewith) as are of a character appropriate to the property." The relief also applies to stock and farm machinery.
- Any milk quota attaching to lands will also qualify for reduction as part of the market value of the lands.
- The relief only applies to agricultural property acquired by an individual, domiciled in the State, who after taking the agricultural gift or inheritance not less than 80% of his gross assets are represented by the value of agricultural property, including livestock, bloodstock and farm machinery. For gifts or inheritances taken on or after 1st February 2007 a donee



is allowed to offset borrowings for the purchase, repair or improvement of on an off farm principal private residence against the value of the property for the purpose of the 80% test.

For gifts or inheritances received after 1st January 2015 the beneficiary must

1. have a relevant agricultural qualification or attain such a qualification within four years of the date of the gift or inheritance, and must farm the agricultural property for a period of not less than six years on a commercial basis with a view to realising a profit.

or

2. spend not less than 50% of their normal working time farming the agricultural property for a period of not less than six years on a commercial basis with a view to realising a profit. Normal working time approximates to 40 hours per week.

Where the beneficiary leases the agricultural property the individual to whom the property is leased must satisfy condition 1. or 2. above.

The relief is withdrawn in certain circumstances:

If within 6 years of the 'valuation date' the beneficiary ceases to qualify as a farmer as set out above and does not lease the land to a lessee who will farm the land for the remainder of the 6 year period. Or if within six years after the date of the gift or the inheritance lands are sold or compulsorily acquired in the lifetime of the donee or successor, and the agricultural property is not replaced within a year following a sale, or within 6 years following a compulsory acquisition where the land was compulsorily acquired on or after 25th March 2002.

If the gift or inheritance consists of development land and is disposed of in the period commencing 6 years after the date of the gift / inheritance and ending 10 years after the date there will be a partial claw back of the relief.

## BUSINESS RELIEF

There are also some additional points worth mentioning in connection with business relief.

Firstly, the relief will only apply to "qualifying business assets". In the case of a partnership or sole trader, that is assets that are used in the course of a qualifying business activity. Where the value of a business includes some exempted assets, relief will be allowed on the value of the qualifying business assets only.

**Let's take an example.**

Company Valued At	€1,000,000
Qualifying Business Assets	€750,000
Non Qualifying Assets	€250,000
<b>Business Relief</b>	
90% x €750,000	€675,000
	The balance is taxable
€750,000 - €675,000	€75,000 (qualifying taxable assets)
+ Non qualifying Assets	€250,000
Taxable Value	€325,000

Also worth noting is the fact that the relief can also be extended to certain assets owned personally by the disponent that were used in the course of the business where those assets are also the subject of a gift or inheritance to the same beneficiary at the same time as the 'relevant' business assets.

## BUSINESS RELIEF – REVENUE GUIDELINES

For gifts and inheritances taken on or after 23rd January 1997 the taxable value of "relevant business" property is reduced by 90%.

## COMPANY SHARES

The definition of "relevant business property" includes unquoted shares and securities of Irish incorporated companies subject to certain conditions.

## THE COMPANY

The company's business must not consist wholly or mainly of any of the following excluded activities:

- dealing in currencies, securities, stocks or shares, land or buildings, or the making or holding of investments.

## THE BENEFICIARY

For the relief to apply the beneficiary must meet one of the following ownership/control tests:

- i) The shares themselves or together with other shares in the company, held in the absolute beneficial ownership of the beneficiary, give the beneficiary control of 25% of the voting power over all matters relating to the company,

or

- ii) The beneficiary controls the company or the company is controlled by the beneficiary and his relatives,\*

or

- iii) The beneficiary holds at least 10% of the issued capital of the company and has worked full time in the company for five years prior to the gift/ inheritance.

\* Relatives of a person include his spouse or civil partner, his children or the children of his civil partner, mother, father, aunt/ uncle; and any children or grandchildren of any of the foregoing. In addition all spouses or civil partners of relatives are included for the purposes of determining control.

Control includes - having over 50% of the voting power, or owning more than 50% of the shares, or being in a position to control the board of directors.

## BUSINESS RELIEF – UNINCORPORATED BUSINESS

Relevant business property also includes property consisting of a business (sole trader) or an interest in a business (share in a partnership). A business that is wholly or mainly concerned with dealing in land, shares, securities or currencies or the making or holding of investments is excluded. The relief will apply where the business or part of the business is transferred and not simply where an asset that had been part of the business is subject to CAT.

## GENERAL CONDITIONS APPLYING TO BUSINESS RELIEF:

Along with the conditions that apply to the business and the beneficiary in order to qualify for business relief, there are some other general conditions worth noting:

### Disponer

The property must have been owned by the disponer for a period of five years prior to a gift or two years in the case of an inheritance.

### Claw-back of Relief

If within six years of the gift or the inheritance of business property:

- the business ceases to qualify, or
- the property is sold or compulsorily acquired and not replaced within one year with other business property the entire relief will be clawed back.

## FAMILY HOME RELIEF

The Finance Act 2000 introduced a complete exemption from inheritance and gift tax on the value of a dwelling, provided the person inheriting the property satisfied certain conditions: broadly, that the dwelling was and continues to be their home. This is commonly referred to as 'family home relief'.

To qualify for the exemption the person who inherits the house must:

- have occupied the house as his/her sole or main dwelling for three years prior to the date of the gift or inheritance,
- at the date of the gift or inheritance not hold an interest in any other dwelling house
- continue to occupy the house as his/her sole or main residence for six years after the date of the gift or inheritance.

Thus the family home may be exempt from inheritance tax if the person who inherits it has lived in the house for three years before they inherit it, and they continue to live there for six years afterwards. In addition, at the time they receive the inheritance they must not own any other residential property - even owning a share in another property means that this relief will not apply.

The relief is not restricted to parent/child relationships. It is available between any two individuals, for example elderly brothers and sisters living together, or cohabiting couples. **Because of the reference to "family home" this relief is often misunderstood.**

## MORE DETAILS - FAMILY HOME RELIEF – FINANCE ACT 2000

The value of a dwelling house taken on or after the 1st of December 1999 may be exempt from gift and inheritance tax in the hands of the beneficiary provided he or she satisfies certain qualifying conditions. Dwelling house, for the purpose of this relief, means a building or part of a building with up to one acre of land that is used or is suitable for use as a dwelling. To obtain the exemption the beneficiary must satisfy all the following conditions:

- a) He or she must have occupied the dwelling house as his or her only or main residence continuously throughout the three year period immediately prior to the date of the gift or inheritance.\*

In relation to a gift only, any period in the three year period prior to the date of the gift, during which a beneficiary occupied a house that was, at that time, the disponer's only or main residence, will not be treated as a period of occupation, unless

the donor lived with the beneficiary by reason of old age, and is dependant on the beneficiary for services.

- b) He or she must not be beneficially entitled to any interest in any other dwelling house at the date of the gift or inheritance.
- c) He or she must continue to both own and occupy the dwelling house as his or her only or main residence throughout the period of six years following the date of the gift or inheritance.\*\*

\*Where the dwelling house directly or indirectly replaced other property, the three year period in condition a) will be satisfied if the beneficiary occupied both properties for a total of three of the four years prior to the date of the gift or inheritance.

In relation to a gift only the 'other property' and the property comprised in the gift must both have been owned by the disponer during the three-year period prior to the gift.

\*\* The exemption will not be withdrawn where condition c) above is breached in the following circumstances:

- as a result of the beneficiary requiring long term medical care in a hospital, nursing home or convalescent home, or
- where the beneficiary does not occupy the house as a result of working abroad, or
- where the beneficiary was aged 55 at the date of the gift or inheritance, or
- where the house is sold, if the beneficiary reinvests the proceeds in another dwelling house.

## FAVOURITE NIECE/NEPHEW RELIEF

Favourite nephew/niece relief entitles a beneficiary who is a child of the disponer's brother or sister or a child of the civil partner of the disponer's brother or sister to be treated as a 'child' of the disponer provided certain conditions are met. Where the relief applies, the niece or nephew is entitled to the Group 1 threshold instead of the Group 2 threshold.

The relief applies to a niece or nephew who has worked substantially on a full time basis for the disponer for the period of five years ending on the date the disponer ceases to have a beneficial interest in possession in the business. The relief will only apply to assets used in connection with the business. Note that farming is a business for the purposes of the relief. In order to qualify for the relief, the beneficiary must have worked a minimum number of hours in the disponer's business, i.e.

- 15 hours per week in a small business, i.e. a business carried on exclusively by the disponer, the disponer's spouse or civil partner and the nephew/niece.
- 24 hours per week in a larger business, i.e. where there are other employees.

The relief (Group 1 Threshold) will only apply to business assets. If there is an inheritance/gift of both business and non-business assets, the Group 1 threshold will apply to the business assets and the Group 2 threshold will apply to the non-business assets. As only benefits within the same Group threshold aggregate, the beneficiary will have two separate thresholds if the benefit consists of both business and non-business assets.

## LIFE ASSURANCE RELIEF

As already stated, inheritance tax is due and payable at certain payment dates. Unpaid tax attracts interest, which is not tax deductible. Therefore if no advance provision is made for inheritance tax, then the beneficiaries of the inheritance will have to either:

- Sell part of their inheritance, or
- Borrow money to pay inheritance tax.

### MAKE ADVANCE PROVISION

The solution lies in effecting a life assurance plan with a sum assured equal to the value of the beneficiaries' estimated inheritance tax liability, with the people who will receive the assets of the estate being the nominated beneficiaries of the plan.

### SECTION 60 RELIEF – NOW CONTAINED IN SECTION 72, CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

To encourage people to plan ahead, and to have cash available to pay inheritance tax when they die, relief is available on certain life assurance plans. This relief was introduced by Section 60 of the 1985 Finance Act to allow people to plan for the payment in a tax efficient manner. The legislation is now contained in Section 72 of the Capital Acquisitions Tax Consolidation Act 2003.

The relief provides that where a life assurance plan is put in place to provide for the payment of inheritance tax, Revenue will not seek to tax the plan proceeds to the extent that the money is used to pay inheritance tax arising on the death of the lives assured under the plan, provided certain conditions are met.

A plan effected under Section 72 of the Capital Acquisitions Tax Consolidation Act 2003 effectively gives your client an option. Rather than letting tax legislation decide how their estate will be distributed, they can pass on their assets in the way they wish: and plan for the tax consequences.

### TAX PAYABLE ON THE INHERITANCE OF AN APPROVED RETIREMENT FUND

The Section 72 relief referred to above was extended by the Finance Act 2005 to cover the 30% tax liability on Approved Retirement Fund (ARF) monies inherited by a child over 21.

### ARRANGING THE SECTION 72 PLAN

In line with Revenue guidance notes, it is recommended that the Section 72 plan be arranged under trust. The advantages of this are:

- It ensures that the plan proceeds are used, in the first instance, to pay inheritance tax. Any surplus may revert to next of kin.
- The proceeds will be paid immediately on death to the nominated trustee. The proceeds will not go into the estate.
- The trust gives flexibility in determining which beneficiaries are to benefit from the plan, and in what proportions.

The plan can be arranged under trust by completing a trust form along with the life assurance application.

### BENEFITS OF LIFE ASSURANCE RELIEF

The benefit of using a 'qualifying' life assurance plan to fund for the payment of inheritance tax is that, as long as certain conditions are met, the proceeds of the plan, when used to pay inheritance tax, will not increase the beneficiaries' inheritance tax liability. As opposed to this, if the money was left in a bank account, for example, this

money will be seen by Revenue as an additional inheritance and will increase the tax bill.

#### Example:

	Bank Account	Section 72/73 Policy
Policy Proceeds	€100,000	€100,000
Tax Payable	€33,000	Nil*
Left to Pay Tax	€67,000	€100,000

\*Assuming the full amount is used to pay CAT

## UNDERWRITING CONSIDERATIONS - INHERITANCE PLANNING PROTECTION

### WHAT ADDITIONAL INFORMATION WILL AN UNDERWRITER LOOK FOR WHEN ASSESSING A SECTION 72 CASE?

In Irish Life, for most cases, an inheritance tax financial questionnaire, outlining how the level of cover is calculated, completed and signed by the Financial Broker and the customer, will be sufficient evidence. However, for very large cases the questionnaire may have to be signed and stamped by a solicitor or an accountant. Check with the underwriting department for individual requirements.

### EXAMPLES OF CAT CASES FOR ILLUSTRATION PURPOSES

#### EXAMPLE 1 - ASSUMING NO RELIEFS APPLY

Estate valued at €1,500,000

The three beneficiaries are the client's children, each to receive 33% of the estate.

#### Tax Liability

The taxable value of the estate is €1,500,000, which gives each child a taxable inheritance of €500,000, on which tax is charged as follows:

		Inheritance Tax
First	€280,000* @ nil rate	Nil
Balance	€220,000 @ 33%	€72,600
Total	€500,000	€72,600

\*Group 1 threshold available from midnight of October 13th 2015.

Therefore each child would have an estimated inheritance tax liability of €72,600, giving a total inheritance tax liability of 3 x €72,600, which is €217,800.

So the total inheritance tax liability amounts to €217,800.

The above assumes that full thresholds are available to the three children; and that the three children have not received any gifts or inheritances from their parents since the 5th of December 1991.

It also assumes that no reliefs (business / agricultural / dwelling home) will apply to the value of any of the assets in the estate.

**This example is for illustration purposes only.**

## EXAMPLE 2 - ASSUMING BUSINESS RELIEF APPLIES

Estate valued at €2,500,000, consisting of:

Family Home	€500,000
Business Assets	€1,500,000
Savings / Investments	€500,000.

The two beneficiaries are the client's children, each to receive 50% of the estate.

### Tax Liability

The taxable value of business property is reduced by 90%, assuming business relief applies.

This reduces the taxable value of this property to €150,000.

With other assets valued at €1,000,000, the total taxable value of the inheritance is €1,150,000, which gives each child a taxable inheritance of €575,000 on which tax is charged as follows:

		Inheritance Tax
First	€280,000* @ nil rate	Nil
Balance	€295,000 @ 33%	€97,350
Total	€575,000	€97,350

\*Group 1 threshold available from midnight on October 13th 2015.

Therefore each child would have an estimated inheritance tax liability of €97,350, giving a total inheritance tax liability of 2 x €97,350, which is €231,000.

So the total inheritance tax liability amounts to €194,700.

The above assumes that full thresholds are available to both children; and that neither child has received any gifts or inheritances from their parents since the 5th of December 1991. Dwelling home relief will not apply to the value of the family home.

Business relief applies to the total value of the business assets.

**This example is for illustration purposes only.**

## EXAMPLE 3 - EXAMPLES TO SHOW THE BENEFIT OF FAMILY HOME RELIEF

Estate valued at €1,000,000, consisting of:

Family Home	€500,000
Family Protection /Life Assurance	€250,000
Savings / Investments	€250,000

Assuming the estate passes to one child the inheritance tax bill is calculated as follows:

3a. Assuming the child still lives at home and family home relief applies:

If family home relief applies the value of the family home is not taken into account when calculating the child's tax liability. This reduces the taxable value of the child's inheritance to €500,000, on which tax is charged as follows:

		Inheritance Tax
First	€280,000* @ nil rate	Nil
Balance	€220,000 @ 33%	€ 72,600
Total	€500,000	€72,600

\*Group 1 threshold available from midnight on October 13th 2015.

3 .b. Assuming the child lives in a dwelling house he/she purchased themselves and family home relief does not apply.

If family home relief does not apply to the value of the family home, then this amount must be taken into account when calculating the client's entire estate. This gives the child a taxable inheritance of €1,000,000, on which tax is charged as follows:

		Inheritance Tax
First	€280,000* @ nil rate	Nil
Balance	€720,000 @ 33%	€237,600
Total	€1,000,000	€237,600

\*Group 1 threshold available from 14th December 2015.

The above assumes that the full Group 1 threshold is available to the child; and that the child has not received any gifts or inheritances from anyone else since the 5th of December 1991.

**This example is for illustration purposes only.**

#### EXAMPLE 4 - NON MARRIED COUPLES

Mary and John have been living together for ten years. They have never married. John dies and his assets pass, through his will, to Mary. His assets are valued at €790,000.

His share of the Family Home	€250,000
His Pension Death in Service Benefits	€240,000
Holiday Home in Cork	€250,000
Savings / Investments	€50,000.

#### Tax Liability

The total taxable value of Mary's inheritance is €790,000, on which tax is charged as follows:

		Inheritance Tax
First	€15,075* @ nil rate	Nil
Balance	€774,925 @ 33%	€255,725
Total	€790,000	€255,725

\*Group 3 threshold available from midnight on October 13th 2015.

Therefore Mary's inheritance tax liability is €255,725.

The above assumes that the full Group 3 threshold is available to Mary. Mary has not received any gifts or inheritances from anyone else since the 5th of December 1991. Dwelling home relief will not apply to the value of the family home – this is because Mary is now the owner of another 'residential property', being the holiday home in Cork.

**This example is for illustration purposes only.**

Your client should seek professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.





# CIVIL PARTNERS' / COHABITANTS' LIFE ASSURANCE

Our society today is changing and more and more people are living together in 'non-married' situations. With the implementation of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, rights similar to those of a married couple have been conferred on registered civil partners and qualified cohabitants. The changes made by the Finance (No. 3) Act 2011 have also had a positive impact on the tax treatment of these 'non married' couples.

Firstly you need to be aware of the new definitions for non-married relationships introduced by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

## CIVIL PARTNER

A civil partner is either of two persons of the same sex who are

- Parties to a civil partnership registration that has not been dissolved or the subject of a decree of nullity, or
- Parties to a legal relationship of a class that is the subject of an order made under Section 5 of the Act (Recognition of registered foreign relationships) that has not been dissolved or the subject of a decree of nullity.

Under the Act a civil partnership cannot be registered if

- The parties are within the prohibited degrees of relationship,
- Either of the parties is already in a civil partnership,
- Either of the parties is under age 18,
- Either of the parties does not give consent,
- The parties are not of the same sex,
- Either of the parties is already married.

## COHABITANT

A cohabitant is one of two adults, who can either be of the same or opposite sex, who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship, or married to each other, or civil partners of each other.

In deciding whether or not two adults are cohabitants the following will be taken into account:

- The duration of the relationship,
- The basis on which they live together,
- If any financial dependence exists,
- Any joint financial arrangements,
- Whether or not there are dependent children, and the support arrangements for any children,
- Whether the parties present themselves to others as a couple.

## QUALIFIED COHABITANT

A qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who was living with the other adult as a couple for a period

- Of two years or more, in the case where they are the parents of one or more dependent children, and
- Of five years or more in any case.

## FINANCIAL COMPENSATION ORDERS

Similar provisions to those in the Family Law Acts which allow a legal spouse to apply for a financial compensation order dictating the treatment of life assurance contracts within twelve months of the date of the decree have been granted to registered civil partners. There is no restriction on when an application for such an order must be made.

The same facility to apply for a financial compensation order has not been granted to qualifying cohabitants.

## SUCCESSION AND INHERITANCE TAX FOR CIVIL PARTNERS AND CO HABITANTS

### CIVIL PARTNERS

Rights similar to legal spouses have now been extended to registered civil partners in the event of death. Under the Succession Act a civil partner is now automatically entitled to a portion of their deceased civil partner's estate, subject to the needs of any children being met.

Also, as a result of separate legislation in the Finance (No. 3) Act the 'spouse' exemption from capital acquisitions tax (gift and inheritance tax) has also been extended to registered civil partners. So now civil partners are entitled to a portion of their deceased partner's estate and they can inherit it tax free.

### COHABITANTS

The same rights on death have not been granted to cohabitants. A qualified cohabitant now has the legal right to apply for provision out of their deceased cohabitant's estate within six months of the granting of representation. However, it is not an automatic right, as in the case of a civil partner, and the cohabitant is only entitled to an amount after the spouse and civil partner's rights have been satisfied.

It is also worth mentioning that, while the surviving cohabitant partner now has the legal recourse to claim from the estate of their deceased cohabiting partner, no change has been made to the capital acquisitions tax legislation that governs the payment of inheritance tax on the transfer of those assets. So while the surviving cohabitant may receive an award on foot of their application they may still have to pay inheritance tax on the value of the assets.

## OTHER TAXES

Following the tax changes made by recent legislation registered civil partners now have much the same tax treatment as a married couple (see summary provided). Some examples of interest might be exemption from exit tax on the transfer of ownership of a life assurance policy, exemption from stamp duty on the transfer of ownership of 'property' and relief from certain fees arising from the change of ownership between registered civil partners of a shared home, such as court fees, registry of deeds fees or land registration fees.

Cohabitants, however, have not been granted the same reliefs. The only reliefs extended to this group will be restricted to the tax treatment of maintenance payments and transfers of property following the court order on the termination of a cohabitant's agreement.

## SUMMARY OF TAX TREATMENT

		Legal Spouses	Registered Civil Partners	Qualified Cohabitants
Inheritance Tax	Unlimited exemption for benefits taken on death or gift.	Yes	Yes	No – treated as 'strangers', Class 3 threshold applies.
Succession Act Rights	Certain automatic minimum rights to their respective estates under a will or intestacy.	Yes	Yes – see updated Succession Act.	No – see updated Succession Act.
Income Tax	Entitled to each other's tax credit, certain reliefs and allowances can be shared.	Yes	Yes	No – treated as single person.
Social Welfare Benefits	Qualify for State Widow's / Widower's contributory pension.	Yes	Yes	Various – see <a href="http://www.welfare.ie">www.welfare.ie</a>
Pension Scheme Death Benefits	Entitled to option of spouse's pension on death in service or retirement.	Yes	Yes	No – unless they can show financial dependence
Financial Compensation Order	Entitled to apply to court following the date of decree	Yes – within 12 months of the date of decree	Yes – no time frame specified	No
Pension Adjustment Order	Entitled to apply to the court for an order	Yes	Yes	Yes – but subject to proof of financial dependence
Capital Gains Tax	Treated as one unit for the purposes of calculation	Yes	Yes	No
Exit Tax	Exemption on assignments	Yes	Yes	No
Stamp Duty	Unlimited exemption on the transfer	Yes	Yes	No

## SUCCESSION ACT INFORMATION

When a person dies all their property devolves to their 'personal representatives' to transfer to the individual's successors. The way property is transferred will depend on whether or not the deceased had made a will. If there is a valid will the personal representatives, the executors, distribute the assets in accordance with the terms of the will.

If there is no will the individual is said to have died intestate, and the property is distributed by the personal representatives, or administrators, in accordance with the provisions of the Succession Act 1965.

The Succession Act provides a legal spouse, a registered civil partner and children with certain minimum legal entitlements as follows:

No Will - where a person dies 'intestate'	
Spouse or civil partner and no children	Spouse or civil partner entitled to full estate.
Spouse or civil partner and children	Spouse or civil partner gets 2/3 Civil partner's entitlement is subject to the financial needs of any children being met 1/3 is divided equally between children.
No spouse or civil partner but children	Estate is divided equally between children.
No spouse or civil partner and no children	Parent(s) if living, otherwise brothers / sisters.
Nieces and nephews only	Divided equally between those surviving.
Other relatives	Divided equally between nearest equal relationship
No relatives	The State

Where an individual dies intestate leaving neither spouse, civil partner nor children, his / her assets will pass to parents; if his / her parents are deceased to his / her brothers and sisters; otherwise to wider family: the Act provides a hierarchical list

Will -a 'testate' death (entitlement regardless of provisions of will)	
Spouse or civil partner and no children	Spouse or civil partner entitled to 1/2 of estate.
Spouse or civil partner and children	Spouse or civil partner entitled to 1/3 of estate.  Civil partner's entitlement is subject to the financial needs of any children being met as directed by the courts.

An individual can make a will any way he/she wants, but Sections 111 and 111A of the Succession Act give a surviving spouse or civil partner certain legal rights regardless of what the will provides.

Children do not have a right to a particular share of the estate under a will. However, Section 117 of the Act gives a child the right to apply to the court for a share of the estate under a will if in the court's opinion "the testator has failed in his moral duty to make proper provision for the child in accordance with his means".

It is worth mentioning that while this right of the child to apply to the courts will not affect the portion of the estate to which a legal spouse has a statutory right, it could impact on the amount of the estate to which a registered civil partner is entitled.

## IMPACT ON SUCCESSION ACT RIGHTS FOLLOWING A DIVORCE/SEPARATION/ DISSOLUTION OF A CIVIL PARTNERSHIP

The surviving spouse or civil partner is legally entitled to the appropriate share regardless of the actual terms of the will. The fact that the parties may have lived apart for many years does not of itself affect their entitlements under the Succession Act 1965.

Succession rights can be renounced voluntarily by either or both spouses or civil partners in a separation agreement, known as a Deed of Separation. It is usual for separating couples to renounce rights to each other's estates in a separation agreement; however a separation does not always involve renunciation of succession rights.

If both parties cannot agree, then they may have no alternative but to seek the assistance of the courts. This may take the form of judicial separation or divorce.

## JUDICIAL SEPARATION

A judicial separation occurs where the court determines that the couple is no longer obliged to live together as a married couple. A judicial separation cannot be applied for unless the couple has a separation agreement.

In granting a decree of judicial separation, a court can remove a spouse's succession rights once it is satisfied that there exists adequate provision for the spouse whose rights are being extinguished.

The court must make proper provision for:

- Spouses
- Any dependent children
- Custody of dependent children
- Family home
- Maintenance and financial provision.

## DIVORCE

- A divorce occurs where a court order is made that dissolves a marriage or civil partnership. This allows either member of the former couple to enter a new civil partnership or marriage.
- Once a decree of divorce or dissolution is granted, the parties are no longer married or in a civil partnership, and succession rights are automatically extinguished.
- A divorce or dissolution decree means the end of succession rights, and as with a judicial separation the court has the power to take the loss of these rights into account when deciding on the financial settlement between the spouses or civil partners.
- The court also has the power to make orders in respect of life assurance for spouses and dependent children

The Family Law (Divorce) Act 1996 deals with the issue of Succession Act rights in the context of divorce.

## DISSOLUTION OF CIVIL PARTNERSHIP

Once a decree of dissolution is granted, the parties are no longer in a civil partnership, and succession rights are automatically extinguished.

Therefore, if your former partner dies without a will, the right to inherit no longer applies.

However, the surviving partner may inherit if:

- the person is named in the former civil partner's will; or
- a request is made to the court requesting that provision be made for the surviving civil partner out of the deceased civil partner's estate.

## MAINTENANCE PAYMENTS ON SEPARATION OR DIVORCE

When putting cover in place to provide for maintenance payments as a result of a divorce decree or separation agreement there are various ways of structuring the life assurance contract to ensure that it is in line with the requirements of the legal agreement.

How you set up the contract will depend on two things:

- Who needs to have ownership of, and control over, the contract during the lifetime of the life assured?

and

- Who needs to receive the death benefit on the death of the life assured / who is to be the beneficiary of the sum assured on the death of the life assured?

## LET'S TAKE AN EXAMPLE

Conor has separated from his wife Julie. As part of their separation agreement he has been instructed to put cover in place to provide maintenance payments for their two children, Emma and Sophie, in the event that he dies before they finish full time education.

There are two options for how to structure this cover:

- Own life in trust
- Life of another.

### Own life in Trust

Conor effects a single life term assurance protection plan using a single life flexible trust form. He is the life assured and the settlor trustee on the contract during his lifetime. His two children, Emma and Sophie, are the beneficiaries of the contract under the trust.

Conor pays the premium on the contract.

### Ownership / Control

Conor owns and controls the contract during his lifetime. Any alterations must be authorised by Conor and notification of any unpaid premiums will be issued to Conor.

### Who receives the benefit?

On Conor's death the sum assured is paid to the nominated trustee, for the benefit of Emma and Sophie as beneficiaries under the trust. As Conor paid the premium on the contract, the girls will be subject to inheritance tax on the sum assured.

Assuming they inherit nothing else from their father they will each be able to avail of the Group 1 tax free threshold of €280,000 before they have to pay inheritance tax.

Important note: A contract issued in trust cannot be assigned to a bank as security for a loan.

### Life of Another

Conor is the life assured under a single life term assurance plan with Julie as the proposer / policy owner. Conor pays the premium on the contract.

### Ownership / Control

Julie owns and controls the contract. Any alterations must be authorised by Julie and notification of any unpaid premiums will be issued to Julie.

### Who receives the benefit?

On Conor's death the sum assured is paid to Julie directly as she is the proposer / policy owner. She can then use the sum assured to provide for her two daughters. Even though Conor paid the premium on the contract, because the policy was set up in line with a separation agreement, Julie will not be subject to inheritance tax on the policy proceeds.

As you can see both structures ensure that there are funds in place to provide for Emma and Sophie. The main differences are around who owns and controls the contract and who the death benefit is paid to.

The correct structure will depend on what is stipulated in the legal agreement.

## ARRANGING PROTECTION COVER FOR COHABITING COUPLES

As you can see from the previous sections, registered civil partners are now treated in much the same way as legal spouses from a Succession Act and an inheritance tax perspective. As the same rights and exemptions have not been given to other cohabiting couples you still need to be aware of the following areas when advising these clients:

- Family Home Relief
- Mortgage Protection
- Other Assets
- Personal Protection
- Use of the small gifts exemption

## FAMILY HOME RELIEF

The Finance Act 2000 introduced a complete exemption from inheritance tax on the value of "a dwelling", provided the person inheriting the property satisfied certain conditions – basically that it was, and continued to be, their home. This is commonly referred to as 'family home' relief. The relief is available to any individual who satisfies the conditions and not just to qualified cohabitants.

To qualify for the exemption the person who inherits the home:

- must have occupied the house as their sole or main dwelling for three years prior to the date of the inheritance,
- does not hold an interest in any other dwelling house at the date of inheritance,
- continues to occupy the house as their sole or main residence for six years after the date of the inheritance.

What this means is that once a couple have been living in the house for three years, regardless of which of them owned the house, or paid the mortgage or the mortgage protection policy, there will be no inheritance tax liability on the value of the house if the above conditions are met.

If the above conditions are not met then there could be significant tax implications for the survivor.



## MORTGAGE PROTECTION EXAMPLE

John and Mary buy a house in joint names. They contribute equally to the deposit, mortgage repayments and joint mortgage protection policy.

The house is valued at €500,000, assuming it's held as joint tenants.

John dies in the first year of the mortgage.

Mary inherits 50% of the property, worth €250,000.

The mortgage is cleared by the mortgage protection policy.

The tax free threshold for Mary is €15,075, with tax at 33% on €234,925 = €77,525.

### Options

Increase mortgage protection policy by €80,000.

Possible tax on €40,000 at 33% is €13,200.

or

Life of another policy, by Mary on John's life, for a sum assured of €80,000.

If Mary had made no contribution to the purchase of the house then she would inherit 100% of the value of the house and she would be faced with a tax bill of €160,025.

After three years family home relief may apply, assuming all the other conditions are met.

## OTHER ASSETS

With the possible exception of the family home, the total value of all assets is liable to inheritance and gift tax, regardless of how long the couple are living together. Where a cohabiting partner inherits other property, including a death benefit under an insurance policy, the €15,075 threshold could easily be exceeded.

## PERSONAL PROTECTION

When you are structuring a life assurance policy for your cohabiting clients, whether or not inheritance tax will be paid on any pay-out from the contract will be decided by two things:

- Who will receive the policy proceeds on death (the beneficiary)?
- Who paid the premiums on the policy?

If the beneficiary did not pay the premiums, or if the beneficiary is not the legal spouse or registered civil partner of the person who paid the premiums, the policy proceeds will be liable to inheritance tax.

### EXAMPLE 1

John Brown takes out life cover of €100,000 on his own life and pays the premiums by direct debit from his own bank account. John dies and based on the terms of John's will the €100,000 is paid to his cohabiting partner Mary Smith.

Assuming Mary inherited no other assets, the liability to tax is as follows:

- Mary's taxable inheritance is €100,000.
- Threshold of €15,075 exempt.
- Balance €84,925 taxed at 33% = €28,025.

### EXAMPLE 2

John Brown and Mary Smith take out dual life cover of €100,000 each. John and Mary are joint owners, and pay premiums out of their joint account. John dies and the €100,000 is paid to his cohabiting partner Mary Smith because she is the surviving policy owner. Assuming Mary inherited no other assets, and Revenue agrees that she has paid 50% of the premiums, she will be taxed on 50% of the benefit.

- So, Mary's taxable inheritance is €50,000.
- Threshold €15,075 exempt.
- Balance €34,925 taxed at 33% = €11,525.

### EXAMPLE 3

Mary Smith takes out a life policy with life cover of €100,000 on John Brown's life, i.e. Mary is the proposer / policy owner with John as the life assured. Mary pays the premiums by direct debit from her own bank account. John dies and the €100,000 is paid to his partner Mary Smith, as she is the legal owner of the policy.

**Mary has no liability to inheritance tax, as she is both the beneficiary and the person who paid the premiums.**

## SMALL GIFTS EXEMPTION

The examples given assume both parties are in a position to contribute to the cost of the policy. Where one party is financially dependent on the other, then no matter how the policies are arranged, on the death of the person who financed the policy the survivor will take a taxable inheritance equal to the full value of the policy.

One way of avoiding the potential taxable inheritance for someone who does not have their own means of income would be to avail of the annual gift tax exemption of €3,000. For this to work, it is vital that the donor first gifts the €3,000 to the beneficiary, who then uses it to pay the premium on the life of another policy. A simple way of setting this up would be for the donor to set up a direct debit to the beneficiary's bank account, and then the beneficiary could effect the life of another policy and pay the €3,000 or part of the premium from his/her own bank account.

## WHEN ADVISING COHABITING COUPLES

When putting in place 'mortgage protection' type cover, arranging the cover on a joint life first death basis may give rise to a potential tax liability. The sum assured could be increased to cover this potential liability. The amount of increased cover will depend on the percentage of the property inherited by the survivor and what, if any, contribution they have made to the mortgage.

When putting in place additional 'family protection' type cover, arranging the cover on a single life 'life of another' basis will avoid any potential liability to inheritance tax but only where the proposer actually pays the premium, i.e. the proposer must have independent financial means.

If the policy is effected on a dual life basis then the cover will need to be increased to take into account the potential tax liability. The amount of increased cover will again depend on the percentage inherited by the survivor and what, if any, contribution they have made to the policy.



Where a couple are planning to marry or register as civil partners in the near future, they may decide that it is more practical to have a jointly owned policy in the long term. So they may be happy to take the risk that in the (hopefully unlikely) event of death before they 'tie the knot' a tax liability may arise.

If a couple have other substantial assets it may be more prudent for them to either effect Section 72 cover on a single life basis nominating each other as the beneficiary of the policy, or alternatively each of them could effect a 'life of another' policy on the other to cover any potential tax liability.

### **SOME MORE USEFUL LINKS:**

[Capital Acquisitions Tax - An Advisers Guide](#)

[Passing on business assets](#)

[Capital Acquisitions Tax - A Customers Guide](#)

[Protection cover for co-habiting couples](#)

[Civil Partners and Cohabitants Life Assurance Issues](#)

[Saving for gift tax](#)

[Sample brokers estate planning factfind](#)

[Tax efficient succession planning for your Approved Retirement Fund \(ARF\)](#)

[Business Relief from CAT](#)

[Using life assurance to fund for your gift and inheritance tax](#)

[Underwriting questionnaire:](#)

[Inheritance Tax Questionnaire](#)



# APPENDICES

## APPENDIX I

1. Sample Personal Shareholder Legal Agreement
  2. Personal Shareholder – Notes on Legal Agreement
  3. Sample Personal Shareholder Trust Form
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### 1. SAMPLE PERSONAL SHAREHOLDER LEGAL AGREEMENT

This agreement is made (date) between (names and addresses of shareholders).

WHEREAS:

- A. The parties hereto are shareholders and directors in the company known as (name and address of company).
- B. The parties hereto desire that on the death of any party hereto his personal representatives shall have the option to sell and the surviving parties hereto shall have the option to purchase the deceased party's shares on the terms hereinafter appearing.
- C. The parties hereto desire to confirm that the said arrangements are reciprocal.

NOW THIS AGREEMENT WITNESSES as follows:

- 1) In consideration of the provisions of Clause 2 hereof on the death of any party hereto the surviving parties shall have the option to purchase the deceased's shares in the said company from the deceased's personal representatives such option to be exercised by notice in writing served within six months from the date of death and on the exercise of such option the deceased's personal representatives shall sell the share to the survivors on the terms hereinafter appearing.
- 2) In consideration of the provisions of Clause 1 hereof on the death of any party hereto the deceased's personal representatives shall have the option to sell the deceased's share in the said company to the surviving parties such option to be exercised by notice in writing served within six months from the date of death and on the exercise of such option the surviving parties shall purchase the share from the deceased's personal representatives on the terms hereinafter appearing.
- 3) The price shall (in default of agreement between the surviving parties hereto) be such price as may be determined on the occurrence of the death of any party hereto as the fair value thereof by the company's auditors for the time being in accordance with the company's Constitution.
- 4) If either option is exercised then (in default of agreement between the surviving parties hereto) the purchase of the deceased's share by the surviving parties hereto shall be made rateably according to their shareholdings immediately prior to the exercise of such option.

- 5) Each of the parties hereto hereby covenants with each of the other parties hereto that in consideration of his being named or described as a beneficiary on a policy of life assurance effected and maintained by each of the other parties with Irish Life Assurance plc, he (so long as the said policies are effected and maintained and he continues to be a shareholder in the said company) will himself effect and maintain a policy with Irish Life Assurance plc for the benefit of the other parties hereto.
- 6) Each of the parties hereto hereby irrevocably authorises the said company, in the event of his failing to pay any premium or premiums due on the said policy, to pay any amount outstanding in respect of such premiums by deduction from his remuneration or from any other sums due to him from the said company on receipt by the said company of a notice in writing from the other parties hereto furnishing details of a non-payment and requiring the said company to do so.
- 7) This agreement shall:
- a) bind the personal representatives of the parties hereto;
  - b) cease to have effect on the winding up of the company otherwise than for the purpose of a reconstruction.

AS WITNESS the hands of the parties hereto the day and year first herein written.

Signature of Shareholder

Signature, address and occupation of Witness

Signature of Shareholder

Signature, address and occupation of Witness

Signature of Shareholder

Signature, address and occupation of Witness

Signature of Shareholder

Signature, address and occupation of Witness

**Note:**

**The company's Constitution should be checked and should be amended if there is any conflict between it and the this draft agreement.**

**This is a specimen agreement; Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional legal adviser.**

## 2. PERSONAL SHAREHOLDER – NOTES ON LEGAL AGREEMENT

### NOTES ON SAMPLE BUY/SELL DOUBLE OPTION AGREEMENT

#### Start

This agreement is made .... insert date of agreement and names and addresses of shareholders.

#### Whereas

This section sets out the main terms of the agreement.

- a) The people involved in the agreement are shareholders and directors in the company known as .... insert name and address of company.
- b) The agreement is basically a buy/sell agreement between the surviving shareholders and the deceased shareholder's personal representatives. However, the double option feature gives both sides the option to not sell / purchase as long as both sides are agreeable.
- c) The arrangement is a reciprocal one. This means that all parties / each shareholder will effect and maintain a life assurance plan for the benefit of the other shareholders.

#### Section 1

This section gives the surviving shareholders the option to exercise in writing, within six months from the date of death of a shareholder, the option to buy the shares of the deceased from his/her personal representatives. If this option is exercised the deceased's personal representatives are compelled to sell the shares.

#### Section 2

This section gives the deceased shareholder's personal representatives the option to exercise in writing, within six months from the date of death, the option to sell the shares of the deceased to the surviving shareholders. If this option is exercised the surviving partners are compelled to purchase the shares.

#### Section 3

This section deals with the price at which the shares are to be bought by the surviving shareholders. In order that a fair and realistic price is given the company's auditors, in accordance with the company's Constitution, will agree the price.

#### Section 4

This section states that if either option is exercised, then the surviving shareholders will purchase the shareholding at the valued rate immediately prior to the date the buy/sell option is exercised.

#### Section 5

This section states that any shareholder that is to benefit from this arrangement will effect and maintain a life assurance plan with Irish Life Assurance plc for the benefit of the other shareholders so long as they continue to be a shareholder.

#### Section 6

This section covers the area of non-payment of premium by the shareholder that is covered under the life assurance plan. The clause gives the company the right to deduct the cost of the premium from the remuneration or monies due to the shareholder covered to pay outstanding premiums due on receipt of notice of non-payment.

#### Section 7

This section contains some terms of the agreement:

- a) The deceased shareholder's personal representatives are bound by this agreement.
- b) The agreement will no longer be valid if the company winds up other than for reconstruction purposes.

#### As Witness

All shareholders must sign individually and their signature must be witnessed.

#### Note:

**Where share purchase cover is being put in place on a personal basis, it is very important that the client's own legal adviser should be consulted on the suitability of these draft agreements for the client's particular circumstances.**

**This is a specimen agreement. Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional adviser.**

### 3. SAMPLE PERSONAL SHAREHOLDER TRUST FORM

#### Shareholder Trust

##### Declaration of Trust

- 1) I (shareholders name)\_\_\_\_\_ of (address)\_\_\_\_\_ have submitted a proposal dated (date of proposal) \_/ \_ / \_ to Irish Life Insurance Assurance plc seeking a policy of assurance on my life. In this document I refer to myself as the "Settlor", Irish Life Insurance Assurance plc as the "Company" and the policy of assurance as the "Policy". The Policy, its proceeds and any benefits which may accrue under it or assets representing it are called the "Trust Fund".
- 2) I hereby request and authorise the Company to issue the Policy to me as trustee upon the trusts set out in this Declaration. The expression "Trustees" means the trustee or the trustees for the time being under this Declaration.
- 3) If the benefit under the Policy shall become payable in consequence of my death, permanent and total disability or a diagnosis that I am suffering from a critical illness (as defined in the Policy conditions), the Trustees shall hold the Trust Fund upon trust for the benefit of all or such one or more of
  - (a) the shareholders for the time being of (name of company) having its registered office at (address of company) and,
  - (b) my spouse (if any), all my children and remoter issue who are now living or shall hereafter be born during my lifetime and my parents, brothers, sisters, uncles, aunts, nephews and nieces who are now living or shall hereafter be born during my lifetime (hereinafter together referred to as "the Beneficiaries") in such shares and subject to such conditions as the Trustees in their absolute discretion shall revocably or irrevocably appoint by deed.
  - (c) However (i) paragraph (b) above shall not apply and the persons referred to in that paragraph shall not be Beneficiaries unless, prior to my death, I shall have ceased to be a shareholder in the above mentioned Company or its shareholders for the time being shall give their consent in writing (which consent shall be deemed to be irrevocable and the consent of any person who may become a shareholder after the giving of that consent shall not be required),
    - (ii) no appointment shall be made nor any power of revocation exercised after my death,
    - (iii) no appointment or revocation by which any Beneficiary may benefit may be made by that Beneficiary acting as sole Trustee, and
  - (iv) the Trustees may at any time or times by deed wholly or partially release or restrict the future exercise of this power of appointment. In default of and subject to any such appointment, the Trust Fund shall be held for the absolute benefit of such of the Beneficiaries as survive me in the proportionate shares in which they are entitled to the capital and goodwill of the Company at the date of my death.
- 4) If the benefit under the Policy shall become payable otherwise than in consequence of my death, permanent and total disability or critical illness (as defined in the Policy conditions) then the Trustee shall hold the Trust Fund upon trust for my absolute benefit.
- 5) As Settlor, I shall have the power by deed during my life to appoint a new or additional Trustee or Trustees and shall also have power by deed to remove any Trustee. The power of appointing a new Trustee or Trustees after my death in any case where there is no Trustee able and willing to act as such is vested in (insert name and address of person who has power to appoint a Trustee after the settlor's death) provided that, as Settlor, I may at any time or times by notice in writing to the Company vest the said power of appointing a new Trustee or Trustees in any person or persons in substitution for the person or persons in whom it has previously been vested.
- 6) Neither I as Settlor nor the Trustees shall have any right to reimbursement of any sum paid or provided as a premium on the Policy unless such right is reserved by written agreement on or before the date of such payment or provision.
- 7) In addition to the general powers of Trustees conferred by law the Trustees shall have the following powers:
  - (a) to exercise any power, election or option available under the Policy or otherwise as if the Trustees were the absolute beneficial owners of the Policy;
  - (b) to enter into any agreement with me, the Settlor, or any other person for the provision of loans for the payment of premiums on the Policy or any other policy held or effected by the Trustees as part of the Trust Fund;
  - (c) to invest the Trust Fund in assets including life assurance policies and annuities as if the Trustees were the absolute beneficial owners of the Trust Fund and to make loans with or without interest to beneficiaries or to persons accountable for payment of tax on property in which such beneficiaries may have a beneficial interest;
  - (d) to pay to or apply for the maintenance, education or benefit of any minor beneficiary or of any other beneficiary who is under disability and unable to give a good receipt, all or part of the capital or income of the share of the Trust Fund to which that beneficiary is absolutely contingently or defeasibly entitled or accumulate such income or the remainder of the income with the capital of such share, as the Trustees may think fit;
  - (e) in any case where a payment of income or capital is made to or for the benefit of a minor beneficiary or to or for the benefit of any other beneficiary who is under disability and unable to give a good receipt, to accept as a good and sufficient discharge the receipt of any parent or guardian of the beneficiary or of any person with whom the beneficiary resides or under whose care and control the beneficiary is or appears to be without being required to supervise the application of the said sum by such guardian or other person.



- 8) Any Trustee (other than me, or any spouse I may have) being a person or Company in any profession or business shall be entitled to be paid all usual professional or business charges for work done by him (or by any employee or partner of his) or it in connection with the trusts hereof including acts which a Trustee not being in any profession or business could have done personally.

Date:                    \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Signature of Settlor:                    \_\_\_\_\_

Signature of Witness:                    \_\_\_\_\_

**Note:**

Where share purchase cover is being put in place on a personal basis, it is very important that the client's own legal adviser should be consulted on the suitability of these draft trust forms for the client's particular circumstances.

This is a specimen agreement. Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional adviser.

## APPENDIX II

### IMPORTANT

This is purely a sample agreement and should not be used as it stands.

There may be a possible conflict between the option agreement and any existing pre –emption rights in the company's constitution.

In such circumstances it may be desirable to include an additional clause in the option agreement stating that the agreement supersedes any pre – exemption rights in the constitution.

A company should draft its own agreement in conjunction with its own legal & taxation advisers.

**SECTION 1** - This is the definition section, defining terms that are used throughout the agreement.

**SECTION 2** -This makes the Agreement conditional on the company effecting and maintaining a life assurance policy on the life of the shareholder for the purpose of buying back that shareholder's shares on death.

The purpose of this Section is to prevent a situation arising where the company could be compelled under the Agreement to buy back its shares from a deceased shareholder where the company had no life cover in place on that shareholder and hence had no liquid funds to complete the purchase.

**SECTION 3** -This clause is self-explanatory and emphasises the point that the Agreement can only be performed insofar as such performance complies with the provisions of Part 3, Chapter 6 of the Companies Act 2014.

**SECTION 4** -This Section outlines the nature and extent of the Put and Call Options and states that the options shall arise on the occurrence of the Specified Event, i.e. death. These options are always subject to the provisions of Part 3, Chapter 6 of the Companies Act 2014. Clause 4.1.3 also states that the company can only purchase its shares under the options only to the extent which it can purchase the shares out of Profits Available for Distribution, or otherwise in accordance with the Companies Act 2014.

**SECTION 5** -This Section outlines the procedures for the exercise of the Put and Call Options following the death of the shareholder. The company's Call option lapses after three months from the death of the shareholder. The Vendor's Put option lapses after six months from the death of the shareholder.

**SECTION 6** -This section specifies the procedure for calculating the purchase price of the shares to be bought back on death. Clause 6.1 simply says that the purchase price shall be based on the market value of the shares on the last day before the death of the shareholder. The purchase price shall in no way be affected by the receipt by the company of the proceeds of the life policy.

**SECTION 7** -This section contains some general clauses. Clause 7.3 provides a procedure for determining which of the two shareholders died first in circumstances where they die simultaneously, e.g. in a plane crash. This might be relevant if both shareholders were the subject of separate Put and Call Option agreements and it was uncertain which buy back should occur first.

This agreement is made the  /  /

between (Mr X of)

(the "Vendor" which expression shall include his executors and administrators) of the one part and (Y Limited)

having its registered office at

(the "Company" which expression shall include it's successors) of the other part.

**Note:** Every effort has been made to ensure that the information in this publication is accurate at the time of going to press. Irish Life Assurance plc accepts no responsibility for any liability incurred or loss suffered as a consequence of relying on any matter published in or omitted from this publication.

## WHEREAS:

- A. The company is a private company limited by shares / designated activity company incorporated in the Republic of Ireland on the  /  [and it has an authorised share capital of  shares  of which  are issued and fully paid up in cash].
- B. The vendor is a shareholder of the company.

**NOW IT IS HEREBY AGREED** by and between the parties hereto as follows:

## SECTION 1 – DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings appearing opposite.

"the Call Option"	The option granted to the Company pursuant to Clause 4.1.1.
"the Companies Act"	The Companies Act 2014.
"the Insurance Company"	
"the Insurance Policy"	The policy of life assurance effected by the Company on the life of the Vendor or on the joint lives of the Vendor and any other shareholder of the Company, or any policy issued in substitution or in lieu of such policy, for the purpose of enabling the Company to purchase the shares from the Vendor or his personal representative or beneficiaries in accordance with this Agreement.
"other Shareholders"	Shareholders of the Company other than the Vendor.
"Chapter 6"	Part 3, Chapter 6 of the Companies Act 2014.
"the Purchase Price"	The price of the share calculated in accordance with Section 6 hereof.
"the Put Option"	The Option granted to the Vendor pursuant to Clause 4.1.2.
"the Shares"	Any or all of the shares held by the Vendor in the Capital of the Company at the date of the occurrence of the Specified Event.
"the Specified Event"	The death of Mr. X.

## SECTION 2 – CONDITIONS

- 2.1 This Agreement shall be conditional upon the Company having entered or entering into the Insurance Policy within  days of the execution of this Agreement and shall be further conditional upon the continuing payment by the Company to the Insurance Company at the times specified in the Insurance Policy of all the premiums and other sums required in order to keep the insurance policy effective.
- 2.2 Failure to comply with Clause 2.1 shall render this Agreement null and void.

## SECTION 3 – PART XI

3. It shall be a fundamental term of this Agreement that any obligations assumed by the company under this Agreement shall at all times be subject to the provisions of Chapter 6 and shall not be construed to require the Company to do anything in breach of any of the provisions of Chapter 6, or any of the provisions of the Companies Act 2014.

## SECTION 4 – PUT AND CALL OPTION

- 4.1 Subject to the provisions of Chapter 6 and Section 5, on the occurrence of the Specified Event:
- 4.1.1 The company shall be entitled to purchase the Shares from the Vendor at the Purchase Price;
- and
- 4.1.2 The Vendor shall be entitled to require the Company to purchase the Shares from the Vendor at the Purchase Price.
- 4.1.3 The company may purchase the Shares only to the extent to which it can purchase the shares out of Profits Available for Distribution or to the extent to which it can otherwise purchase the Shares in accordance with the provisions of Chapter 6, and the provisions of the Companies Act 2014.

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## SECTION 5 – EXERCISE OF THE OPTION

- 5.1 The Call Option shall be deemed to be exercised forthwith upon the giving of notice in writing by the Company to the Vendor within three months from the occurrence of the Specified Event. The Put Option shall be deemed to be exercised forthwith upon the giving of notice in writing by the Vendor to the Company within six months of the occurrence of the Specified Event:
- 5.2 A notice in writing in accordance with the provisions of Clause 5.1 having been given by the Company or (as the case may be) by the Vendor, the Company pay to the Vendor by way of bankers draft the Purchase Price and in return for the payment therefore the Vendor shall furnish to the company the share certificates in respect of the Shares and do all other acts necessary in order to pass title in the Shares, free from all liens, charges and encumbrances to the company.

## SECTION 6 – EXERCISE OF THE OPTION

- 6.1 Upon exercise of the Put Option or the Call Option the Purchase Price shall be determined by the auditors of the Company based on the market value of the Shares on the day immediately preceding the occurrence of the Specified Event, and shall not take account of any increase in the share price or asset value of the Company which might otherwise occur by virtue of receipt of the proceeds of the Insurance Policy. The determination by the auditors of the Purchase Price shall be final and binding. The auditors will act in this regard as experts and not as arbitrators and the provisions of the Arbitration Acts will not apply.

## SECTION 7 – GENERAL

- 7.1 Any notice required to be given hereunder shall be in writing and shall be delivered by hand or sent by prepaid post to the party to whom such notice is to be given at its address as set out herein (or such other address as such party may have notified in writing from time to time as its address for the purposes of notices hereunder) and if delivered by hand shall be deemed to have been received upon delivery, and if sent by post, shall be deemed to have been received forty eight hours after posting.
- 7.2 The captions in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 7.3 In the event of the deaths of two shareholders in the Company occurring simultaneously the oldest shareholder will be deemed, for the purpose of this Agreement, to have died first.
- 7.4 This Agreement is personal to the Company and the Vendor and shall not be assigned by either of them.
- 7.5 This Agreement may be rescinded by the passing of a Special Resolution by the Company in accordance with Section 107 of the Companies Act.
- 7.6 This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Ireland.
- 7.7 If any term or provision of the Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision shall to that extent be deemed not to form a part of this Agreement and the enforceability of the remainder hereof shall not be affected.

**Note:** Every effort has been made to ensure that the information in this publication is accurate at the time of going to press. Irish Life Assurance plc accepts no responsibility for any liability incurred or loss suffered as a consequence of relying on any matter published in or omitted from this publication.

## CONTACT US

**EMAIL:** [advisoryservices@irishlife.ie](mailto:advisoryservices@irishlife.ie)  
**WEBSITE:** [www.irishlife.ie](http://www.irishlife.ie)  
**WRITE TO:** Irish Life Assurance plc, Irish Life Centre, Lower Abbey Street, Dublin 1.

Irish Life Assurance plc is regulated by the Central Bank of Ireland.  
Irish Life Assurance plc, Registered in Ireland number 152576, Vat number 9F55923G.

LAS (10/15)

## APPENDIX III

1. Sample Partnership Insurance Legal Agreement
2. Sample Partnership Insurance Trust Form

### 1. SAMPLE PARTNERSHIP INSURANCE LEGAL AGREEMENT PARTNERSHIP DOUBLE OPTION AGREEMENT

This agreement is made (date) \_\_\_\_\_

between (names and addresses of partners) \_\_\_\_\_

WHEREAS:

- A. The parties hereto are partners in the Firm known as (name and address of Firm)
- B. The parties hereto desire that on the death of any party hereto his personal representatives shall have the option to sell and the surviving parties hereto shall have the option to purchase the deceased party's share in the said firm on the terms hereinafter appearing.
- C. The parties hereto desire to confirm that the said arrangements are reciprocal.

**NOW THIS AGREEMENT WITNESSES** as follows:

1. In consideration of the provisions of Clause 2 hereof on the death of any party hereto the surviving parties shall have the option to purchase the deceased's shares in the said Firm from the deceased's personal representatives such option to be exercised by notice in writing served within six months from the date of death and on the exercise of such option the deceased's personal representatives shall sell the share to the survivors on the terms hereinafter appearing.
2. In consideration of the provisions of Clause 1 hereof on the death of any party hereto the deceased's personal representatives shall have the option to sell the deceased's share in the said Firm to the surviving parties such option to be exercised by notice in writing served within six months from the date of death and on the exercise of such option the surviving parties shall purchase the share from the deceased's personal representatives on the terms hereinafter appearing.
3. The price shall (in default of agreement between the surviving parties hereto) be such price as may be determined on the occurrence of the death of any party hereto as the fair value thereof by the Firm's Auditors for the time being in accordance with the Partnership Agreement.
4. If either option is exercised then (in default of agreement between the surviving parties hereto) the purchase of the deceased's share by the surviving parties hereto shall be made rateably according to their share in the Firm immediately prior to the exercise of such option.
5. Each of the parties hereto hereby covenants with each of the other parties hereto that in consideration of his being named or described as a beneficiary on a policy of life assurance effected and maintained by each of the other parties with Any Insurance Assurance plc, he (so long as the said policies are effected and maintained and he continues to be a partner in the said Firm) will himself effect and maintain a policy with Any Insurance Assurance plc for the benefit of the other parties hereto.
6. Each of the parties hereto hereby irrevocably authorises the said Firm, in the event of his failing to pay any premium or premiums due on the said policy, to pay any amount outstanding in respect of such premiums by deduction from his remuneration or from any other sums due to him from the said Firm on receipt by the said Firm of a notice in writing from the other parties hereto furnishing details of a non-payment and requiring the said Firm to do so.
7. This agreement shall:
  - a) bind the personal representatives of the parties hereto;
  - b) cease to have effect on the dissolution of the firm.

**AS WITNESS** the hands of the parties hereto the day and year first herein written.

Signature of Partner \_\_\_\_\_

Signature, address and occupation of Witness \_\_\_\_\_

Signature of Partner \_\_\_\_\_

Signature, address and occupation of Witness \_\_\_\_\_

Signature of Partner \_\_\_\_\_

Signature, address and occupation of Witness \_\_\_\_\_

Signature of Partner \_\_\_\_\_

Signature, address and occupation of Witness \_\_\_\_\_

**Note:**

Where partnership cover is being put in place, it is very important that the client's own legal adviser should be consulted on the suitability of these draft forms for the client's particular circumstances.

This is a specimen agreement; Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional adviser.



## 2. SAMPLE PARTNERSHIP INSURANCE TRUST FORM

### PARTNERS TRUST

#### Declaration of Trust

1. I (partners name) \_\_\_\_\_ of  
(address) \_\_\_\_\_  
have submitted a proposal dated (date of proposal) \_\_\_\_\_ to Any Insurance Assurance plc seeking a policy of assurance on my life. In this document I refer to myself as the "Settlor", Irish Life Assurance plc as the "Company" and the policy of assurance as the "Policy". The Policy, its proceeds and any benefits which may accrue under it or assets representing it are called the "Trust Fund".
2. I hereby request and authorise the Company to issue the Policy to me as trustee upon the trusts set out in this Declaration. The expression "Trustees" means the trustee or the trustees for the time being under this Declaration.
3. If the benefit under the Policy shall become payable in consequence of my death, permanent and total disability or a diagnosis that I am suffering from a critical illness (as defined in the Policy conditions), the Trustees shall hold the Trust Fund upon trust for the benefit of all or such one or more of
  - (a) the partners for the time being of the firm known as (name of firm) \_\_\_\_\_ carrying on business at (address of firm) \_\_\_\_\_ and their successors in business, and,
  - (b) my spouse (if any), all my children and remoter issue who are now living or shall hereafter be born during my lifetime and my parents, brothers, sisters, uncles, aunts, nephews and nieces who are now living or shall hereafter be born during my lifetime (hereinafter together referred to as "the Beneficiaries") in such shares and subject to such conditions as the Trustees in their absolute discretion shall revocably or irrevocably appoint by deed.However
  - (i) paragraph (b) above shall not apply and the persons referred to in that paragraph shall not be Beneficiaries unless, prior to my death, I shall have ceased to be a partner in the above mentioned firm or its partners for the time being shall give their consent in writing (which consent shall be deemed to be irrevocable and the consent of any person who may become a partner after the giving of that consent shall not be required),
  - (ii) no appointment shall be made nor any power of revocation exercised after my death,
  - (iii) no appointment or revocation by which any Beneficiary may benefit may be made by that  
Beneficiary acting as sole Trustee, and
  - (iv) the Trustees may at any time or times by deed wholly or partially release or restrict the future exercise of this power of appointment.  
In default of and subject to any such appointment, the Trust Fund shall be held for the absolute benefit of such of the Beneficiaries as survive me in the proportionate shares in which they are entitled to the capital and goodwill of the firm at the date of my death.
4. If the benefit under the Policy shall become payable otherwise than in consequence of my death, permanent and total disability or critical illness (as defined in the Policy conditions) then the Trustee shall hold the Trust Fund upon trust for my absolute benefit.
5. As Settlor, I shall have the power by deed during my life to appoint a new or additional Trustee or Trustees and shall also have power by deed to remove any Trustee. The power of appointing a new Trustee or Trustees after my death in any case where there is no Trustee able and willing to act as such is vested in (insert name and address of person who has power to appoint a Trustee after settlor's death) \_\_\_\_\_ provided that, as Settlor, I may at any time or times by notice in writing to the Company vest the said power of appointing a new Trustee or Trustees in any person or persons in substitution for the person or persons in whom it has previously been vested.
6. Neither I as Settlor nor the Trustees shall have any right to reimbursement of any sum paid or provided as a premium on the Policy unless such right is reserved by written agreement on or before the date of such payment or provision.
7. In addition to the general powers of Trustees conferred by law the Trustees shall have the following powers:
  - (a) to exercise any power, election or option available under the Policy or otherwise as if the Trustees were the absolute beneficial owners of the Policy;
  - (b) to enter into any agreement with me, the Settlor, or any other person for the provision of loans for the payment of premiums on the Policy or any other policy held or effected by the Trustees as part of the Trust Fund;
  - (c) to invest the Trust Fund in assets including life assurance policies and annuities as if the Trustees were the absolute beneficial owners of the Trust Fund and to make loans with or without interest to beneficiaries or to persons accountable for payment of tax on property in which such beneficiaries may have a beneficial interest;
  - (d) to pay to or apply for the maintenance, education or benefit of any minor beneficiary or of any other beneficiary who is under disability and unable to give a good receipt all or part of the capital or income of the share of the Trust Fund to which that beneficiary is absolutely contingently or defeasibly entitled or accumulate such income or the remainder of the income with the capital of such share, as the Trustees may think fit;
  - (e) in any case where a payment of income or capital is made to or for the benefit of a minor beneficiary or to or for the benefit of any other beneficiary who is under disability and unable to give a good receipt, to accept as a good and sufficient discharge the receipt of any parent or guardian of the beneficiary or of any person with whom the beneficiary resides or under whose care and control the beneficiary is or appears to be without being required to supervise the application of the said sum by such guardian or other person.

8. Any Trustee (other than me, or any spouse I may have) being a person or Company in any profession or business shall be entitled to be paid all usual professional or business charges for work done by him (or by any employee or partner of his) or it in connection with the trusts hereof including acts which a trustee not being in any profession or business could have done personally.

Date:                    \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Signature of Settlor: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

**Note:**

Where partnership cover is being put in place, it is very important that the client's own legal adviser should be consulted on the suitability of these draft forms for the client's particular circumstances.

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PENSIONS  
INVESTMENTS  
LIFE INSURANCE



# Irish Life

## CONTACT US

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**WEBSITE:** [www.irishlife.ie](http://www.irishlife.ie)  
**WRITE TO:** Irish Life Assurance plc, Irish Life Centre, Lower Abbey Street, Dublin 1.

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The information and tax rates contained in this booklet are based on Irish Life's understanding of legislation and Revenue Practice as at January 2016 and may change in the future. While great care has been taken to ensure the accuracy of the information contained in this Guide, Irish Life cannot accept responsibility for its interpretation nor does it provide legal or tax advice.

In the interest of customer service we will record and monitor calls.  
Irish Life Assurance plc is regulated by the Central Bank of Ireland.